

50 SHADES OF
FEDERALISM

 Hanns
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SHADES OF FEDERALISM

Volume I

Rethinking Federalism in the Philippines

The Three Shades of American Federalism

Switzerland in 2018 - The Re-birth of Federalism

The Federalism Debates in Nepal and Myanmar: From Ethnic Conflict to
Secession-Risk Management

COVID-19 and its Effects on the Federalism Initiative in the Philippines

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Introduction: Shades of Federalism Volume 1

There has been a growing interest in federalism in The Philippines in recent years. Questions about effective and good governance, minority rights and a fairer sharing of financial resources have all been given as reasons for this renewed interest. The election of President Rodrigo Duterte in 2016 has resulted in a new focus on the federalisation of the country, as this has been a major issue promoted by the President.

In this Volume of Shades of Federalism, we are discussing different elements of federalism in a variety of countries and compare and contrast them to ongoing debates in The Philippines. We highlight how federalism reform remains relevant for The Philippines but is hampered by a lack of progress in the reform efforts and by ongoing centralized rule from Manila. Issues such as conflict resolution in Mindanao and the efficient administration of a country that comprises more than 7,600 islands remain highly salient. Despite a recent slow-down in federalism reforms and discussions, there is a continued need to think about a re-arranged, more efficient and fairer system, in which all parts of the country can benefit from its resources and wealth, in which all groups feel included, and in which federalism helps to strengthen and support democratic governance.

The first paper in this volume is by Michael Yusingco, who discusses the current federal debate in The Philippines, focusing on both, the need for wider federal reform in the country, and the barriers towards proper federalization. He highlights how federalism can contribute to democracy and better governance, especially when it ensures a fairer distribution of resources. His Conclusion is very clear – the move towards federal government can have many benefits for The Philippines and is something that should be aspired to by its political elites.

The second paper focuses on the oldest federation in the world – the United States of America (USA). US federalism has inspired many other federal countries, not only in Latin America, but also in countries such as Nigeria and more recently in Iraq. In The Philippines too, the legacy of American rule remains important both in everyday life as well as in political discussions. Yet, US federalism, as demonstrated by John Kincaid, has not been static. It has moved between phases of cooperative and more competitive federalism, times of cooperation and consensus between the States and the federal government, and times of conflict and crisis. Many people would say that right now another time of conflict and crisis has been reached because of some of the actions of the Trump administration. From dealing with the corona-virus pandemic to watering down environmental regulations, President Trump has sought conflict with key States and by doing so, has demonstrated how the federal system operates under strain.

The third paper assesses the second oldest federation, the first European federation – Switzerland. Nicolas Schmitt discusses the evolution of Swiss federalism, the importance of compromise as a key value of Swiss politics, and how Switzerland has successfully managed linguistic,

religious, cultural, and economic diversity. However, this does not mean that federalism is not contested or criticised, as Schmitt points out. Many Swiss are instead very sceptical about their federal system, sometimes arguing for more uniform solutions, sometimes arguing for wider decentralisation. This, however, should not overshadow the success of Switzerland as a prime example of federalism as a tool to manage diversity, strengthen democracy and bring different language, religious and cultural groups together.

The fourth paper focuses on two cases studies from South-East Asia. Michael Breen compares discussions on federalism in Nepal and Myanmar. He argues that both elite compromise and external involvement played a significant role in Nepal's successful implementation of federalism in 2015, and Myanmar's slow progress towards federal democracy. Despite a commitment to establish a federal democratic union in a nationwide ceasefire agreement between the government and several ethnic armed organisations from 2015, little progress towards such a union has been achieved in the last five years in Myanmar. While the reasons for this lack of progress are complex and multiple, Breen points out that the lack of elite commitment to federal reform plays a major role in explaining Nepal's success and Myanmar's inability to move towards federal government.

In the final paper in this volume, we return to the case of The Philippines. Raymund Rosuelo examines the current handling of the corona-virus pandemic in the country, and points out that it is a good example to see the deep-rooted nature of centralised and authoritarian decision-making in Filipino politics. He argues that while the health crisis highlights the need for decentralised decision-making structures and more autonomy for the different provinces, political elites instead still try and deal with this emergency from Manila, thereby neglecting that the crisis does not affect each part of the country in the same way. Instead, he argues for a more decentralised approach, one in which elites in Manila would coordinate more with provincial and local elites to address the current challenges.

The Philippines are on a long road towards federal governance. Yet, ongoing debates, further requirements for fiscal decentralization and the demand by multiple groups to become recognized and receive autonomy all point towards the need for a more decentralised, federal structure of the state. We hope that this publication will contribute to the different debates on federalism, and will inspire people to continue to discuss and debate federalism and its advantages and disadvantages in The Philippines.

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Goetz Heinicke, Resident Representative, Hanns Seidel Foundation - Philippines

01

**Rethinking Federalism in
the Philippines**

Michael Henry Yusingco

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Abstract

The Philippines has been on a continuing decentralisation project since independence in 1946. The country's 1987 Constitution has a local autonomy prescription which sets the standard of "maximum decentralization, short of federalization". However, the present decentralisation system established by the Local Government Code (LGC) of 1991 has failed to meet this constitutional benchmark. Proposals to shift to a federal system remain a part of this ongoing decentralisation mission, but its perceived connection to constitutional change has effectively stymied the federalism advocacy because Filipinos do not support constitutional reform. Nevertheless, the goal to deepen decentralisation in the Philippines still stands. Hence, amending or replacing the LGC to reflect the constitutional standard of "maximum decentralization, short of federalization" must still be pursued. The rethinking of federalism as being part of a menu of decentralisation arrangements is an alternative approach to consider. Corollary to this, a deliberate resort to federalism studies can significantly assist legislative efforts to reach the "maximum decentralization" standard.

Introduction

The Philippines has been a unitary presidential nation-state since independence from American colonial rule on 4 July 1946. However, it has since been on a decentralisation path with only a devastating interruption of autocratic rule from 1971 to 1985 under Ferdinand Marcos.

The decentralisation project has always been driven by criticism over the concentration of political and administrative powers in the central government. The prevailing belief is that this centralised system of government has caused economic prosperity to be contained within the capital region and the peripheral areas. De-centralising government is thus seen as the means to correct this unequal distribution of economic gains in the country.

The decentralisation trajectory of the country resumed upon the restoration of constitutional democracy with the ousting of Marcos via direct citizen action in February 1986. The country's 1987 Constitution explicitly mandates the state to "ensure the autonomy of local governments" (Article II, Section 25) and dedicates an entire article (Article X) outlining how to do this.

The Philippine constitution created a multi-level government structure with provinces, cities, municipalities, barangays and the two autonomous regions in Muslim Mindanao and the Cordillera as the subnational or local level of government (Article X, Section 1). Moreover, it mandated the legislature to enact "a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units." (Section 3)

The Local Government Code of 1991 (LGC) currently provides the legal framework for decentralisation in the Philippines. Two provisions of this statute speak to the purpose and scope of the decentralised system it established:

- Section 2. (a) – It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

- Section 3.(m) – The national government shall ensure that decentralization contributes to the continuing improvement of the performance of local government units and the quality of community life.

According to the Supreme Court, under this decentralisation arrangement, the national government has not completely relinquished all its powers over local governments, and indeed only administrative powers over local affairs are delegated to political subdivisions (Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000). The impact of the LGC has been the subject of volumes of studies. Some show that a number of provinces and cities, specifically those with progressive and capable leaders, have benefited immensely from the LGC. But by and large, governance is still the domain of the central government, which really indicates that the constitutional prescription of local autonomy has not been completely fulfilled. Thus, decentralisation in the Philippines has so far been, “neither a notable success nor a disappointing failure” (Balisacan, et al, 2008).

Maximum Decentralisation

As previously mentioned, the 1987 Constitution guarantees the autonomy of local governments. According to the framers of the constitution, local autonomy in the text means “a kind of maximum decentralization, short of federalization” (Record of the Constitutional Commission, Volume 3, August 11, 1986, p178-179). This original understanding of local autonomy in the national charter signifies that the country’s decentralisation framework can approximate a federal setup. In fact, the broad framework outlined in Article X already features mechanisms traditionally associated with federal systems.

For instance, these provisions mandate the fiscal autonomy of local governments:

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

Whereas these provisions prescribe mechanisms to facilitate intergovernmental relations between the two levels of government as well as amongst local governments:

SECTION 13. Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance

with law.

SECTION 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

These provisions in the 1987 Constitution give credence to the view that the Philippines is “federalized in all but name” (Tigno, 2017). Nevertheless, proposals to shift to a federal system remain a part of this continuing decentralisation project. It must be noted though that the federalism advocacy in the Philippines is not a monolithic reform movement. Most advocates are fuelled by dissatisfaction with the LGC to spur economic development beyond the capital region, while some are convinced a federal structure is the right fit for a highly diverse state like the Philippines. But what makes the federalism campaign exceptional is the fact that proponents have linked the reform effort to constitutional change. This has proven to be detrimental to the federalism cause itself because Filipinos are averse to constitutional reform.

The Philippine constitution has not been amended at all because any move toward this end has always been viewed as an underhanded scheme to extend the term of a sitting president. This national scepticism resulted directly from how Marcos manoeuvred the constitutional reform process in 1971 to make sure he stayed in office indefinitely. The country’s 1973 Constitution provided legal colour to his dictatorial regime.

This deep public mistrust is reflected in the results of two nationwide surveys conducted in 2018 by the two most respected polling firms in the Philippines. One was from Pulse Asia Research showing that 64 per cent of respondents are not in favour of amending the 1987 Constitution. The other was from Social Weather Station showing only 37 per cent of Filipinos support a radical revision of the charter to facilitate the shift to a federal system of government.

Clearly, unless public sentiment changes drastically, any federalism initiative riding on a proposal to amend the 1987 Constitution will not prosper. But deepening decentralisation in the Philippines need not be stalled by this impasse. The pursuit for “maximum decentralization, short of federalization” as envisioned by the framers of the constitution should still carry on because the existing legal autonomy framework does not meet this standard. Remarkably, a rethinking of federalism may move this reform endeavour forward with more success.

Decentralisation as a Spectrum and Federalism as a Toolkit

Advocates in the Philippines must reconsider their conceptualisation of federalism as a final and indivisible idea whose institutionalisation can only be realised in a new constitution. First of all, this rigid view is fundamentally inconsistent with the original conception of local autonomy in the 1987 Constitution. As previously argued, the legal framework of decentralisation in the

country can feature federal mechanisms.

More critically, federalism is not a fixed and finite concept in relation to statecraft, particularly in de-centralising government. Indeed, it is but one of four types of decentralisation arrangements which also includes delegation, devolution and regional autonomy. Saunders (2018) defines these arrangements as follows:

Delegation: Allocation of power by the centre to other levels of government in what remains essentially a unitary state, in which the centre retains authority to withdraw the delegated power or to direct its use. Typically, the power delegated is executive or administrative power, or minor law-making power.

Devolution: Conferral of legislative and executive (and sometimes judicial) power on other levels of government in a manner that gives them substantial autonomy, without the complete surrender of formal control by the centre.

Regional autonomy: Conferral on one or more regions of a greater degree of self-governing authority than is conferred on other parts of the state.

Federation: Division of governing authority between the centre and one or more other orders of government in a way that gives each of them final autonomy in their own areas of responsibility.

Notably, these arrangements can be treated as units on a spectrum with delegation as the weakest and federation as the deepest autonomy regime. And each arrangement is not totally distinct, but they can actually shade into one another. As demonstrated above, the LGC is a blend of delegation and devolution. Moreover, the recently enacted and ratified Bangsamoro Organic Law which created the Bangsamoro Autonomous Region in Muslim Mindanao is an example of regional autonomy. Indeed, this conceptualisation of federalism as part of a navigable spectrum is more in sync with the framer's vision of "maximum decentralization, short of federalization".

It must be pointed out at this juncture that the constitutional parameters for the local government code prescribed by Section 3 actually allow for the creation of a decentralisation framework that can approximate a federal structure. In other words, the Philippines can navigate close to the federation end of the decentralisation arrangement spectrum by enacting a local autonomy law that features federal mechanisms. Again, a rethinking of federalism becomes utterly valuable here.

Decentralisation reform advocates, not just federalism proponents, in the Philippines should likewise retreat from looking at federalism as just a type of government system to contrast with the unitary system presently existing in the country. Federal theory is rich in scope and highly nuanced and can be an excellent resource to help the effort to deepen decentralisation in the Philippines.

For example, one of the criticisms to the response of the current government headed by President Rodrigo Duterte to the COVID-19 pandemic is the lack of coordination and

cooperation between the central government and local governments. Hence, amending the LGC to institute a governance structure that is genuinely anchored on intergovernmental cooperation and collaboration would certainly be a reform initiative worth considering. As previously mentioned, smooth and productive intergovernmental relations is already a prescription in the 1987 Constitution.

The concept of Intergovernmental Relations or IGR is explained in academic literature as “the processes and institutions through which governments within a political system interact.” (Phillimore, 2013) IGR mechanisms “seek the achievement of common goals through alignment and cohesion across all levels of government” (Vincent and Nzewi, 2018). IGR is traditionally associated with federal systems. IGR processes have been described as the “lifeblood of federalism in practice”. But IGR mechanisms can and do play a key role in unitary systems as well, particularly those with embedded decentralisation arrangements.

Guidance from academic and empirical analysis of IGR is vital to institutionalising this federal mechanism in the Philippines now. A review of the relevant literature on this matter shows that to be effective, the IGR mechanism to be instituted must have these core elements. The first one is that there should be mutual respect between the different levels of government. There must be an unequivocal recognition of each side’s authority and accountability. Second, there must be an ethos of interdependence. Each side must see the need to cooperate and collaborate to achieve the intended goal. Third, the IGR mechanism must be a platform for civic participation. Hence, there must be space for civil society organisations to engage in the policy-making process as well as in the implementation phase of any development program.

This is just one example of how federalism studies can help deepen decentralisation in the Philippines. Obviously, the rich discourse on federal fiscal autonomy can also be influential in refining the allocation of powers, responsibilities and resources in the LGC. Needless to say, designing or reforming decentralised arrangements is a difficult and complex process. A whole array of issues needs to be addressed both by lawmakers who have political considerations to deal with and their legal and technical experts tasked to ensure the reforms or change are genuinely understood by the public. Nonetheless, a concerted resort to federal theory as a law reform toolkit could bring local autonomy in the Philippines closer to the “maximum decentralization” standard prescribed by the 1987 Constitution.

Conclusion

The Philippines has been on a continuing decentralisation project since independence in 1946. Pertinently, its current constitution has a local autonomy prescription which sets the standard of “maximum decentralization, short of federalization” for its Congress to meet. The present decentralisation legislation however has failed to meet this constitutional benchmark.

Proposals to shift to a federal system remain a part of this ongoing decentralisation

mission. But its perceived connection to constitution change has effectively stymied the federalism advocacy because Filipinos do not support constitutional reform.

While constitutional change continues to be a non-viable option for reforming the present local autonomy framework, amending or replacing the LGC to reflect the constitutional standard of “maximum decentralization, short of federalization” must still be pursued. And this can be facilitated by a rethinking of federalism as being part of a menu of decentralisation arrangements. That as such, federalism studies can significantly inform legislative efforts to deepen decentralisation in the Philippines.

Suggested Citation: Yusingco, M. 2020. ‘Rethinking Federalism in the Philippines’. 50 *Shades of Federalism*.

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02

**The Three Shades of
American Federalism**

John Kincaid

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Abstract

Donald Trump is a transgressive president elected by a minority of voters but elevated to the White House by a quintessential institution of American federalism, the Electoral College. However, the federal system otherwise poses significant barriers to transgressive behaviour because it is a complex mix of dualism, intergovernmental cooperation, and national coercion. The system's constitutional dualism allows space for autonomous state policy-making. The system's rulebound and bureaucratic structures of intergovernmental policy implementation limit the ability of one president to substantially alter this cooperative dimension of the system. The long-run trend, though, is toward greater centralization and federal government coercion of state and local governments.

Introduction

Descriptions of American federalism are like the blind men and the elephant. There is a failure to link the pieces into a coherent picture, in part because American federalism has evolved into a complex system of compatible and seemingly incompatible elements. Also, characteristics of one facet of the system are often generalized to the whole system. Thus, Stewart (1984) compiled 497 descriptors of American federalism, among the most famous of which is Grodzins' (1966) "layer cake" versus "marble cake" federalism.

The three key elements of American federalism today are dualism, cooperation, and coercion. These elements are usually treated as sequential historical phases, with dual federalism being the first phase displaced by another (Corwin, 1950), but this is mistaken because the institutionalization of any phase creates a path dependence that prevents another phase from displacing it entirely. Historical phases can be identified by their predominant characteristics, but a new phase arrives incrementally, although with an eventual critical juncture augmenting it, while the old phase still functions alongside and in the interstices of the new phase. Each phase, moreover, has particular impacts on federalism and intergovernmental policymaking and administration.

Dual Federalism

Scholars often note that despite the post-1960s growth of coercive federal power, states still exercise considerable policy autonomy, such as legalizing medical and recreational marijuana (which are illegal under federal law) and physician-assisted suicide, and pursuing climate-change initiatives, school choice, abortion rules, consumer protection, occupational licensing, and autonomous-vehicle regulation. States also pioneer policies, such as same-sex marriage, that are later adopted by the federal government and imposed on the rest of the states.

The U.S. Constitution is dualist. Limited powers are delegated to the federal government; all other powers are reserved to the states. The Constitution is silent about such matters as consumer protection, education, environmental protection, health care, corporation charters, and local government. Additionally, the federal government and each state government is complete under its own constitution.

The U.S. Supreme Court has affirmed dualism. In *Sturges v. Crowninshield* (1819), the court held that states can exercise powers delegated exclusively to Congress so long as Congress does not pre-empt them or the court does not find them in violation of interstate commerce. In *Prigg v. Pennsylvania* (1842), the court said state officials were not required to enforce the U.S. Fugitive Slave Act of 1793. Non-slave states could pass "personal liberty" laws prohibiting state officials from apprehending runaway slaves. *Prigg* laid the foundation for the court's anti-commandeering doctrine articulated in *Printz v. United States* (1997), for state legalizations of marijuana despite its federal illegality, and for sanctuary cities and states that refuse to

cooperate with federal immigration authorities. In *Michigan v. Long* (1983), the court ruled that state high-court rulings that increase individual-rights protections above standards set by the U.S. Supreme Court under the U.S. Bill of Rights cannot be reviewed by the Supreme Court when based solely on “adequate and independent” state constitutional grounds (Collins et al., 1986).

Without the persistence of dual federalism’s dual sovereignty, the system would not be truly federal. Thus, states still have realms of policy autonomy, albeit shrinking realms. However, the rise of partisan polarization since the late 1960s and, today, Donald Trump’s presence in the White House have injected new energy into dual federalism as states increasingly use their autonomy to counteract or weaken federal policies they disdain and to act in the absence of federal action (as many states have done on climate change). All 50 states have enormous socio-economic policy-making capacity. California has the world’s fifth largest GDP. Even the poorest state, Mississippi, has the world’s 24th highest GDP per capita.

Cooperative Federalism

Cooperative federalism is often said to have originated in the 1930s (Clark, 1938), but intergovernmental cooperation has been present since 1789 (Elazar, 1962). For example, Congress deferred to state concerns in the Judiciary Act of 1789 by creating federal district-courts wholly within state boundaries. Nineteenth-century cooperation also included land grants, pork-barrel expenditures, loans and loan forgiveness, federal-property transfers, cash grants, technical assistance, and research and information sharing. “The right of the federal government to give to the states land from the federal domain and money from the federal treasury has never seriously been questioned” (Macdonald, 1928, p. 1).

Cooperative federalism entails the willingness of the federal government to negotiate and bargain with state and local officials over the formulation of federal policy and the implementation of federal policies by states and localities.

In the past, Congress regularly deferred to the states, as in an 1866 act funding state quarantine enforcement but instructing the treasury secretary not to “add to, modify or supersede any state regulation” (Maxey, 1908, p. 622). This approach changed in the twentieth century when Congress increasingly directed and regulated states through cash grants-in-aid. President Franklin D. Roosevelt’s New Deal marked a critical juncture institutionalizing cooperative federalism. From 1930 to 1940, the number of grants increased by 107 percent (Dilger, 2017), and federal spending for grants increased by 2,006 percent (Maxwell, 1952).

However, cooperation was gradually redefined, especially during the 1960s, as the willingness of state and local governments to cooperate with the federal government increased—not vice versa. This conception was driven partly by belief that the federal government possessed superior expertise. Thus, contemporary ‘cooperative federalism’ is said to situate “uniformity and finality for first-order norms at the national level, while allowing dialogue and plurality at

the level of state implementation of those norms” (Bader, 2014, p. 164). The nationalist school of federalism celebrates this development as “the power states enjoy as national government’s agents” (Gerken, 2014, p. 1626). Hence, the most federalist dimension of cooperative federalism—the willingness of elected federal officials to treat elected state and local officials as partners in federal policy formulation—has atrophied such that intergovernmental cooperation in the implementation of federal policies, especially through grants, is dominated by bargaining among federal, state, and local bureaucrats—all of whom have strong incentives to maintain a mostly cooperative and even collusive system.

Coercive Federalism

Coercive (Kincaid, 1990) or regulatory federalism (U.S. Advisory, 1984), which emerged in the 1960s under President Lyndon B. Johnson’s “creative federalism,” describes an era in which the federal government can assert its policy will unilaterally over state and local governments. There are few constitutional or political limits on exercises of federal power, elected state and local officials are no longer policy-making partners with federal officials, and federal rules affect most state and local policies (Kincaid, 2011). Coercive federalism is characterized by unprecedented levels of regulations attached to federal grants, federal mandates on states, federal pre-emptions of state policies, and federal court orders altering state institutions and policies.

Coercive federalism emerged as the dominant contemporary element mainly as a national political response to social movements demanding deep federal interventions into state and local polities in order to protect individual rights, the environment, and other social goods and also mitigate negative externalities (e.g., air pollution) while fiscally enticing states into redistributive programs despite redistribution being more properly a federal function (Musgrave, 1959).

Changes in the party system enhanced coercive federalism and cemented its bipartisan endurance by muting the intergovernmental voices of elected state and local leaders. The Supreme Court’s “one person, one vote” rulings in the mid-1960s eviscerated the parties’ county and municipal power bases, which were crucial electoral links between local and federal elected officials. The Democrats’ 1968 national presidential convention marked a critical juncture as insurgents revolted against the party’s bosses, more national party rules were imposed on state parties, and the weight of convention-delegate representation shifted towards identity groups (e.g., minorities and women).

Republicans soon followed suit. The post-1968 proliferation of primary elections further weakened state and local party leaders; encouraged candidate-centred campaigns financed by individuals, big donors, and national interests; and fostered polarization as party and issue activists often determined primary outcomes. What occurred was a de-coupling of the electoral fortunes of members of Congress and presidents from the influence of elected state and local

officials who had controlled much of the party machinery since the federal republic's early days.

Two other factors further fostered coercive federalism. Public employee unions played a major role by agitating for substantial federal interventions to benefit their interests (Kincaid 1993), as reflected in the most momentous twentieth century federalism ruling, *Garcia v. San Antonio Metropolitan Transit Authority* (1985), which directed states to rely on the national political process rather than on the Constitution's Tenth Amendment to protect their powers.

Coercive federalism also was facilitated by the marked decline during the 1960s of the Democratic South as a powerful force in Congress. Southern representatives had played a key role in protecting state and local government prerogatives from federal coercion (Gibson, 2012).

Conclusion

Although policy alterations from one presidential administration to another are common in today's era of polarization, there continues to be more continuity than discontinuity in the federal system because the coexisting elements of the system are highly institutionalized and path dependent. Dual federalism, while less robust than in the past, still permits healthy state innovation and counteracts Trump's transgressive presidency. The bureaucratized system of cooperative federalism ensures that the system's 1,319 grant programs function relatively free of gross congressional and presidential interference. Hence, for example, Trump has been unable to cut off grant funds to sanctuary jurisdictions. Coercive federalism, however problematic, ensures many uniform protections of individual rights and social equity nationwide. Nevertheless, the system's long-term future may be dysfunctional because heightened centralization is eroding the system's dualism and the coercive phase is eliminating the federalist dimension of cooperative federalism, thereby reducing cooperative federalism to the idea that the legitimate position of state and local governments is to be mere agents of the federal government.

Suggested Citation: Kincaid, J. 2019. 'The Three Shades of American Federalism'. 50 *Shades of Federalism*.

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03

**Switzerland in 2018 –
The Re-birth of Federalism**

Nicolas Schmitt

Nicolas Schmitt, PhD, teaches at the Institute for Federalism at the University of Fribourg, Switzerland. His varied research interests has enabled him to work worldwide on many topics devoted to federalism and decentralization, ranging from the local authorities in Switzerland to comparative federalism and policy analysis, not to mention cultural and linguistic topics. He is a member of the Swiss Team of electoral observers (missions in South Africa and Bosnia Herzegovina), has been Guest Professor at a number of institutions and has written extensively on federalism and decentralization.

Abstract

Switzerland is often held up as one of the most successful examples of a stable federal system. Since its creation in 1848, Swiss federalism has contributed to the country's stability, as well as its wealth and prosperity. Notwithstanding the generally accepted success of the Swiss experiment with federalism, the Swiss themselves very much relish an opportunity to examine and criticise the federal system. This has even been institutionalised in the form of 'National Conferences on federalism' which, when convened every three years, provide a forum for a discussion on the development of Swiss federalism, often focusing on drawbacks and weaknesses as opposed to benefits. For the first time in many years, however, the 2017 National Conference presented federalism in a more positive light. This article briefly details the history and complexity of federalism in Switzerland, discusses the development of the National Conferences and concludes with a discussion on federalism in times of illiberal democracy.

Introduction

Stemming from a subtle yet patiently elaborated balance, recognised as a milestone of the national institutional architecture, Swiss federalism, for approximately thirty years, has come to be increasingly examined, critiqued and questioned. Several reasons explain this evolution, including the ramifications and effects of globalisation, particularly the tendency to favour centralised structures.

In Switzerland, every three years a “National Conference on Federalism” takes place, tasked with facilitating discussions and questioning the system of Swiss federalism. For many years, the future of federalism has been a primary concern for these conferences. But, in 2017, for the first time, more answers than questions resulted from the fifth gathering of these conferences. This evolution has to be welcomed because it demonstrates a strengthening both of cantons and federalism in a (global) period of insecurity and uncertainty.

Federalism in Switzerland: A Historical Overview

In 1291 the first three cantons – Uri, Schwyz, and Unterwalden – founded a confederal alliance, although their pact of 1291 makes reference to an earlier ‘antiqua confoederatio’ of 1273. These three original cantons were later joined by all other cantons, one after another. The last three cantons – Geneva, Neuchatel, and Valais – joined as part of the Pact of 1815 following the defeat of Napoleon. Thus it took more than 500 years to complete Switzerland’s integration process. After the short-lived war of the Sonderbund (i.e., modernist Protestants versus the conservative Catholic separatist league) in 1847, the Switzerland, as we know it today, began to take shape. Its foundation rests on the first federal Constitution of 1848, which reflected the outcome of the Sonderbund War as well as the popular revolutions that had swept through Europe at the time.

In 1874 a total revision of the Constitution was undertaken to correct problems with the 1848 version, yet although this was approved by a double majority (the population and the cantons), it did not significantly alter the Swiss system. Although subject to 155 partial revisions, the Constitution has remained in force for 125 years. In 1999, an ‘update’ of the previous text was undertaken to modernise the document and clarify and order the previous 155 revisions. This was adopted by popular vote on 18 April 1999 and entered into force on 1 January 2000. In most basic respects, then, the Swiss political system has remained largely unchanged since 1848.

Although the 1848 Constitution was rejected by eight cantons, due in part to the citizens’ fear of its modernity, it soon acquired full legitimacy. Cantons were able to preserve their individual identities, even a certain patriotism, to the point that they could be considered micro-states. On the other hand, as the country was based on a fragile consensus after a war, federal authorities have always (and successfully) taken great care not to upset cantons.

Why National Conferences on Federalism?

Set up jointly by the Confederation (the Swiss National Government) and the Conference of Cantonal Governments (KdK/CdC), an international Conference on Federalism took place in St. Gallen in August 2002 under the auspices of the Forum of Federations. This event was unanimously considered a success and it was therefore decided, on the initiative of the canton of St.Gallen, that a national level dialogue on the tricky questions regarding federalism should be convened. The organisers of these triennial conferences are, besides cantons who host the meeting, the Federal Council (Government), the Council of States (Upper House of Parliament) and Kdk/CdC, in addition to the top leadership of the country.



(Maps Open Source 2018)

The National Conferences on Federalism represent an opportunity to transcend everyday federalism, to evaluate the success of the Swiss system and to highlight new tendencies evolving in the system. More precisely, it is tasked to identify potential opportunities of innovation for federalism, to define possible brakes in the innovation and to participate in the process of political decision-making required for the implementation of the reforms. These regular exchanges at the national level should allow for an improvement of the understanding of federalism in such

a way that it should become a daily concern of the political world as well as a subject of public interest.

One of the primary concerns of these conferences is to examine the capacity of cantons to adapt themselves to meet the challenges of the 21st century, particularly the pressures of global trends, the role of the municipalities and the cities in the system, the positive or negative influence of competitiveness and the role of federalism in the everyday life of Swiss citizens.

To date, five conferences have been organised. The themes of the conferences, however, reveal a certain ‘anxiety’, perhaps better described as ‘a fear of tomorrow’. Federalism is shown as fragile, subject to unprecedented problems, concerns and thus an uncertain future:

Fribourg (2005) – ‘Cooperative Federalism: Facing New Challenges’

Baden (AG, 2008) – ‘Swiss federalism under the Pressure of Efficiency’

Mendrisio (TI, 2011) – ‘Federalism and the New Territorial Challenges: Institutions, Economy and Identity’

Solothurn (2014) – ‘Federalism: Questioning Cohesion and Solidarity’

Montreux (VD – 2017) – ‘Will Switzerland Still Be Federal in 50 years?’

National Conferences and Global Criticism

Switzerland is a highly democratic country in which experts, but also citizens, relish the opportunity to criticise the system. The criticisms addressed to federalism focus traditionally on five concerns, oft-considered as almost insurmountable challenges, among others by Prof. Adrian Vatter [1]

1. Cantons are too small and present too many differences between them (ratio 93-1 concerning population between Zurich and Appenzell Inner-Rhoden).
2. The *political territories* of citizenship match less and less often the functional spaces of studies or work because of increasing mobility and pendularity.
3. The proliferation of parallel structures (760 inter-cantonal agreements called “concordats”, 500 inter-cantonal “conferences” to date) complicates the management of the country.
4. The advantages granted to the losers of the Sonderbund Civil War are too generous and give too much weight to the small Catholic cantons like Obwalden, Nidwalden, Appenzell, Lucerne, Zug or Valais.
5. Linguistic tensions have not been tempered, in particular in German-speaking Switzerland where French and English fiercely compete.

Some questions, therefore remain: How to deal with these critiques in the context of contemporary Swiss federalism? How far is it still wise to take them into account? Does it mean the opening of an era of reform or just a masochist syndrome which gives arguments for all detractors

of federalism?

The extreme fragmentation of power in the country means that we do not have a kind of “Great Helmsman” who consistently instil a feeling in the citizenry that we are the best and that we need to make Switzerland great again (although, this is a role the right-wing Swiss People Party has tried to play). Usually, a Protestantism inspired modesty guides the authorities, who are open to crackpot theories, like cantons’ merging. This was very clear during the 2011 and 2014 Conferences.

The Montreux 2017 Fifth National Conference

The theme of the fifth Conference sounds particularly provocative: Will Switzerland still be federal in 50 years? As usual, just before the opening of the fifth Conference, the daily newspaper “Le Temps” published a rather controversial article written by Yelmarc Roulet under the title “Unbalanced Federalism”: “Even if it showed its relevance for 170 years, the model of the Swiss federalism shows increasing weaknesses [...] The 5th national Conference [...] highlights both the inadequacies of the system as the difficulties in retouching such fragile mechanics [...] The institutional consideration of urban Switzerland, through a special status for cities, a reform of the Council of States assuring their presence, remains a crucial stake face in which you should not give up”.

But in contrast to previous Conferences, discussions in Montreux brought to light a different vision of Swiss federalism. Numerous speakers underlined that the institutional construction of Switzerland satisfactorily functions and that the vague desires of in-depth reforms, predominantly evoked during the last decades, are not really on the agenda any more. They have reaffirmed with a vibrant consensus that Swiss federalism is not overburdened by current stakes, and that, on the contrary, it constitutes a factor of competitiveness and prosperity. In a nutshell: the potential imperfections of Swiss federalism are considered as an enrichment rather than an impoverishment.

Among others, the German-speaking geographer and political analyst Michael Hermann, expressed with a peculiar scientific clarity this change of paradigm. He sees in the visible inadequacy of the federal system not a source of weakness, but an opportunity to show in particular that the internal historic borders, can have well and truly an integrative strength and as such avoid tensions which can be located in other (quasi)-federal systems, such as Belgium or Spain.

He makes a similar positive report about the differences of size: they have the strength of the disproportions, oppose unifying planning and incite to look for simple and flexible solutions, adapted to the diversities of the current society.

Concerning cities, which seemingly do not wish to be treated like other municipalities, they should understand that their inhabitants, their citizens and their authorities enjoy over-proportioned power and real relative advantages. The first is the fact that (contrarily to “normal”

municipalities) they are able to enjoy a professional political and administrative staff, better trained in the management of a community than the volunteers of a system of militia which suffers from an increasing lack of incumbents.

Michael Hermann concluded his statement with the beneficial opportunity to cultivate the asymmetries and the differences of all kinds, to increase the general feeling of the necessity – and the collective capacity – of finding simple, adapted, flexible and resistant solutions. He also underlined the importance of multiple and cross-cleavages (linguistic, geographical, and financial) which allow varying minorities and majorities while preventing the confrontation of compact blocks.

Speaking on behalf of cities, the Mayor of Lausanne, Grégoire Junod expressed a similar viewpoint. For him, it is better to give up laborious institutional reforms, aiming for example at the creation of a special status for the big urban districts, and to instead opt for a pragmatic approach, such as a concerted action of cities for the solution of the problems which specifically concern them.

For the first time, officials and experts have sung the praises of federalism which – among other advantages – contributes to the prosperity of Switzerland and to the competitiveness of its economy, as underlined by a recent study established for Fondation.ch and the Union of the cantonal Banks. Prof. Stéphane Garelli, a renowned specialist of international comparisons on this topic, confirmed that processes of large scale centralisation of power has a demobilising effect on the people in charge of political responsibilities. In practice, long-distance management is a dangerous illusion maintained by the telecommunication technologies, which represents a considerable risk. On the contrary, the closeness which characterises federalism constitutes an asset and allows the experimentation of adequate solutions for the management of conflicts on an adequate scale.

In this sense, federalism represents the real strength of Switzerland. Indeed, this was asserted in the “Declaration of Montreux” signed by most participants, and echoes (either explicitly or implicitly) the eponym document published on August 23, 1947 by the representatives of the “Universal Movement for a world Confederation”.

Federalism in a Time of Illiberal Democracy

At a time where in so many countries there are tendencies towards “strong governments” and illiberal democracy, one should insist on the advantages of federalism. The latest national Conference in Switzerland has proven that even scientifically it is possible to change its point of view in order to be less critical. Federalism creates an (endless) dialectic movement between centralisation and decentralisation. Therefore, there is a constant adaptation to changing times and circumstances. The two first federations, United States and Switzerland, belong to the most stable countries in the world, but seemingly also to the most modern countries: this is the result

of federalism's ability to easily evolve and adapt.

There is no real need for big changes or federal revolutions. The simple fact that federalism involves many partners at different levels makes change more difficult to realise, even if there is political will. Insisting too much on the necessity of changes in the federal structure can give arguments to all those politicians who constantly oppose any form of decentralisation. Why should we claim all the time that federalism always faces challenges and needs reform? Why not, on the contrary, spend time and money to study all the advantages it gives to the small amount of federations in the world?

The change of paradigm that we are (perhaps!) experiencing in Switzerland could encourage specialists to concentrate their research on the beneficial dimension of federalism and all the advantages it can bring to political management.

The Necessity to Defend and Promote Federalism

Fundamentally, the fifth national Conference underlined that main effect of Swiss federalism is to create strong political stability. This stability results in a strong and stable economy and is a factor in the attraction of foreign companies to Switzerland. This asset must not be underestimated, particularly at a time when some European States (not to speak of extra European States) are shaken by centrifugal (because unanswered) community claims. Moreover, federalism implies the possibility for dialogue with authorities which are geographically and culturally in touch with their citizens' needs, capable of understanding the problems and the needs for companies settled on their territory.

The study of federalism should concentrate on its success rather than on its failures. It should also avoid the notion of "continual change". Opponents to federalism like to claim that it is a complicated system in constant need of reform, not to mention that it costs a lot, in terms of both effort and money (what is obviously not the case). In researching and demonstrating scientifically how federalism is a better system of government than the others, it could perhaps inspire other countries, experts or politicians, and prove its opponents wrong. A good place to start, would be to point out that federalism is not a kind of nonsensical ravings, but provides structures to nurture the link between political stability and economic success.

Suggested citation: Schmitt, N. 2018. 'Switzerland in 2018 – The Rebirth of Federalism?'. *50 Shades of Federalism*.

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04

**The Federalism Debates in
Nepal and Myanmar:
From Ethnic Conflict to
Secession-Risk
Management**

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Abstract

Nepal and Myanmar both committed to establishing federalism in response to ethnic conflict and a secession risk. However, while Nepal has successfully enacted a federal constitution following a participatory process, Myanmar's elite-based negotiations have slowed considerably. The management of the secession risk is the key issue pervading the federalism debates in these countries. This is especially manifest in decisions about how and where to draw provincial boundaries (ethnic versus territorial federalism) and the division of powers. Such design features can help overcome the perception within Myanmar's military that federalism will lead to secession, which remains a significant hurdle.

Introduction

Ten years ago, two countries in Asia took significant steps on their journeys towards federalism. In Nepal, a newly elected constituent assembly declared, as its first act, the country to be a democratic, secular and federal republic. In Myanmar, a new ‘quasi-federal’ constitution was approved in a (dubious) referendum, as one step in a ‘managed transition to democracy’.

There are other similarities between Nepal and Myanmar. Both are developing countries, home to more than 100 different ethnic groups and with a history of centralised authoritarian rule interspersed with short-lived democratic periods. Significantly, their steps towards federalism have been taken in response to ethnic conflict.[1] Yet, they have not walked in unison.

Since 2008, Nepal has completed a new three-tiered federal constitution, held elections for each tier and established its local and provincial structures. Conversely, despite a much-heralded democratic change of government in 2015/16, Myanmar’s federalism debate remains mired in the legacy of its independence process and the ensuing – and ongoing – internal conflicts.



(50shadesoffederalism.com)

Secession Risk and Holding-together Federalism

The paradox of federalism[2] (Erk & Anderson, 2009) will be familiar to many readers. It is especially relevant to ‘holding-together’ federal systems like Myanmar and Nepal, where it often



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manifests as a question about secession. In such holding-together contexts, the secession risk is both the key reason for and against federalisation (Breen, 2018b). It is less obvious in the Nepal case, but no less pertinent. The secession risk pervades both the question of whether or not to establish federalism, as well as how it should be designed.

A secession risk can be managed by institutional design. For example, whether provinces[3] are more or less ethnically homogenous, the revenue and power-base of the provinces, and the emergency intervention powers of the central government. Therefore, once federalism is agreed, debates focus on how and where to draw the boundaries of provinces, in particular whether they should be ethnically- or territorially-based, and what powers provinces should have – in particular, law and order and revenue.

Agreements for Federalism

Myanmar

In Myanmar, federalism debates have been longstanding, yet suppressed. In 1947, the Panglong Agreement was reached between representatives of the Bamar ethnic group and three other large ethnic groups. It promised full autonomy in internal affairs, which was taken to mean federalism, and there was an apparent side-agreement on a secession right (Williams, 2017). However, the agreement was never properly implemented, and the semblance of autonomy in the subsequent constitution was revoked by the military in 1962 following a threat by one of the ethnic groups to exercise its secession right. Since then, the promises of Panglong, and its sometimes-contradictory prescriptions, have hung over the heads of state-builders, ethnic political actors and the military (Walton, 2008).

Federalism is now a commitment of all key actors in Myanmar. In the lead up to the 2015 election, several ethnic armed organisations (EAOs) and the government signed a national ceasefire agreement, which recorded a commitment to 'Establish a union based on the principles of democracy and federalism' (Item 1.a., Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations). But there was little in the way of detail and the agreement was 'a first step' only (Item 1.b.).

The 2015 election was a pivotal moment in Myanmar's transition. The National League for Democracy, headed by Aung San Suu Kyi promised 'genuine federalism' and won in a landslide. However, the military retained 25% of the seats in parliament, and thereby a veto right on constitutional change.^[4] Many EAOs maintained their arms and continue to agitate, politically and militarily, for federal constitutional change. Moreover, discussion of federalism was effectively banned until recently, and so there is a knowledge gap and very little public participation – especially when compared with Nepal (see Breen, 2018c, pp. 127-134). Instead, the 2008 constitution (drafted by a constitutional convention working within tight parameters established by the military) now forms a clear basis for further federalisation.

Nepal

In Nepal, the 2006 Comprehensive Peace Agreement and 2007 Interim Constitution provided the roadmap for federalisation. They included commitments to state restructuring and political inclusion, but little detail or direction on the nature of a future federal system (Item 3.5, Government of Nepal & Communist Party of Nepal (Maoist), 2006). This task was left to a constituent assembly elected in 2008 (and again in 2013).

The constituent assembly committed formally to federalism in 2008, in response to uprisings in the Terai (the southern plains adjoining India) and associated secession threats. It instigated a participatory constitution-making process, punctuated by thousands of public meetings,

democratic dialogues and education programmes, which together had an important influence on the final outcome (Breen, 2018a). The vestiges of Nepal's authoritarian past were well and truly sidelined by this point and had no role in the federalisation process.

Ethnic Federalism and the Division of Powers

Nepal's constituent assembly was able to agree most issues within a two-year period. However, it was a further five years before the new numbers and boundaries of the provinces were agreed. The political parties bickered about whether there should be ethnic federalism or territorial federalism – or in their words, whether states should be based on identity or viability (Breen, 2018a). Some (e.g. Lawoti, 2014) would argue that this can be reduced to an argument about maintaining the hegemony of the dominant group, or not. However, at its most fundamental, it is a question of secession risk.

A large proportion of the country was unsatisfied with the final outcome, because it did not include a Madhesi province in the west, or one single Madhesi province running across the Terai (International Crisis Group, 2016). But creating such a state would create an unacceptably high secession risk,^[5] reigniting persisting fear since a supposed Indian annexation plan in the 1970s.

In Myanmar, there are longstanding provinces (states and regions) and there is much resistance to change. However, debates are no less vehement. One issue that causes much consternation is a proposal to merge existing regions (that are mixed or have a Bamar majority) into a single Bamar state. This would meet the rhetoric of the founding father of modern Burma, Aung San, that 'if the Bamar get one Kyat [unit of currency], then you will get one Kyat' (cited in Walton, 2008, p. 897). In other words, one ethnic state for each (major) ethnic group. But the Bamar comprise around two thirds of the population, and the creation of a single Bamar province would violate Hale's (2004) contention that ethno-federations with a 'core ethnic region' are more likely to collapse.

Further, there are several small 'self-administered zones'. Some groups assert that these should be upgraded to full provinces (states). One, the Wa, have their own official currency and language (both Chinese), and the largest non-state army in the country. The Wa have not actively participated in the concurrent national ceasefire or constitutional reform processes, yet it is difficult to see how their demands could be resisted if peace is to be achieved.

The other major issue of debate on federalism pertains to the powers of the states and regions. In Nepal, the provinces have a rather broad set of powers and the potential to become strong in their own right. In Myanmar, states and regions have a very weak set of powers, including no law and order powers, and low revenue raising capacity. The debate over powers in Nepal has been relatively muted. No changes to the division of powers have been made across the various drafts of the constitution (Breen, 2018c, pp. 121-7).

Conversely, in Myanmar, the provincial boundaries are taken by many to be settled, so the next best design option to prevent secessionism (as perceived) is by not allowing the states and regions to assume the resources needed to mount a successful movement – in particular, law and order powers, and of course, a federal army[၆] (Breen, 2018c, pp. 127-34). If the boundaries of the states and regions were changed (or de-ethnicised), perhaps a more balanced division of powers might be countenanced.

The role of the provinces in the governance of the centre (shared-rule) is subject to very little discussion. Bicameralism is accepted but mostly, a role (for ethnic minorities) in the centre is anticipated to come through their involvement in the major political parties, rather than as some part of grand coalition involving ethnic parties or provinces, or proportionality (Breen, 2018c, 158-66).

Conclusion

Nepal is currently implementing its new (2015) federal constitution. Myanmar has some way to go before it can be said to have federalism, however, there is a commitment, and many see it as inevitable. Further, there are important lessons and innovations that can be drawn from their process and their existing arrangements.

For one, I argue that there is a regional model emerging, which deserves more research and attention (Breen, 2018c, pp. 40-51). Secondly, other states in Asia continue to face the federal challenge. Sri Lanka (still) has a constitutional assembly in place, and there is a draft (quasi-federal) constitution being tossed around. The Philippines is also considering federal constitutional change. The president campaigned on a promise to establish federalism (and eliminate drugs) and a draft has been released to the public. Thirdly, Nepal successfully deployed a participatory process, while Myanmar's is elite driven.

Finally, the secession risk is an issue that pervades federalism debates across the globe (see, Keil and Anderson, 2018: 96-99).[7] Yet, it has not been adequately assessed or understood – including how federal state-builders might best manage it. Irrespective of the normative understanding of secession one takes, there are few people involved in constitutional reform in Asia that would ever contemplate enabling secession or increasing the risk otherwise. So what are the best ways to manage secession risks? And can we better understand the health of a federal system by understanding how and why a secession risk fluctuates?

The design of holding-together federalism is about risk management, and for many, the biggest risk is secession. When the military in Myanmar becomes satisfied that federalism, in one way or another, will not lead to secession, then the next hurdle can be crossed. Such an understanding does not need to come via renunciation or by force, but through design.

Suggested Citation: Breen, M. G. 2019. 'The Federalism Debates in Nepal and Myanmar: From Ethnic Conflict to Secession-risk Management'. *50 Shades of Federalism*.

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[1] In the case of Nepal, the conflict was between the state and a Maoist insurgency. However, in Nepal class and ethnicity align and the Maoists deliberately and explicitly incorporated and pursued the demands of the non-dominant ethnic groups (Devkota, 2012).

[2] That federalism can simultaneously accommodate and exacerbate ethnic difference.

[3] Known as states and regions in Myanmar.

[4] The constitution's amendment process requires the approval of more than 75% of all representatives in the national parliament, thus giving the military an unofficial veto.

[5] Around half the population of Nepal lives in the Terai and, at the time, armed groups with links to India were running rampant.

[6] A federal army is demanded by EAOs to accord them recognition and to prevent a future military coup.

[7] See also, Sanjaume (2018) 'Secession and Federalism: A Chiaroscuro' <http://50shadesoffederalism.com/diversity-management/secession-federalism-chiaroscuro/>

05

**COVID-19 and its Effects on
the Federalism Initiative in
the Philippines**

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Abstract

In the Philippines, the federalist initiative can be categorised as a relatively recent political project. The country has for the longest time adopted a strong central government that led to top-down governance. Critics have long pointed out that such concentration of power has led to the neglect of many areas in the country. The clamour was particularly loud especially from the southern part of the Philippines where a protracted civil war, essentially, arrested the development potential of a resource rich region. Recently, secessionist moves led by Islamic rebel groups have been toned down owing to a peace settlement signed under the administration of President Benigno Aquino III. The election of President Rodrigo Roa Duterte in 2016 catalyzed the federalist movement in the Philippines. Under his administration, a consultative commission composed of leading public intellectuals was formed to draft a new constitution to replace the 1987 Constitution that on paper, categorises the country as a unitary state. The draft document christened the “Bayanihan” constitution was eventually submitted to Duterte for his consideration and eventual endorsement to the public (President Duterte receives proposed federal constitution of Consultative Committee – Presidential Communications Operations Office, 2020). Curiously, such expected strong support for this landmark document was not forthcoming owing perhaps to conditions which I will outline below.

Philippines as a Quasi-Federal State?

To further contextualise the federalism initiative in the country, it is imperative to highlight the current structural conditions of the Philippines after the 1986 People Power Revolution. Doing so enables outside observers to get a detailed perspective on the nuances of the Philippine government set-up that shapes the discourse and strategies of relevant political players to any proposed structural change.

Tigno (2017) points out that while the framers of the 1987 Constitution were worried about the creation of a federal structure, they were more afraid of re-establishing the old model of a strictly unitary system. Equally, the framers feared that any call to federalize would lead to the republic's disintegration. The framers, however, worried more about improving the national government. The result was a constitution negotiating the substantial decentralisation of the national government's powers and providing for local autonomy but retaining the unitary system in name.

Tigno further argues that a two-tiered system of political administration exists in the Philippines: the central government and the units of local government. These powers are listed in the Constitution. The relationship between the two levels is such that the central government cannot be said to have absolute sovereignty over all the units of local government. Relations between central and local authorities are in many cases very much part of a negotiated process. More importantly, the constitution protects the political and economic autonomy of local governments, and its implementation is specified in the Local Government Code of 1991.

Philippine Political Culture and Structural Features

While structural changes have been put in place over the years to devolve many powers to the local government units (LGUs) in the country, it is important to view institutional dynamics through the lens of political culture. Owing to cultural peculiarities, the head of the Philippine executive department led by the President of the Republic had often patterned their governance style with what Agpalo (1999) had called the Pangulo regime model. This model can be differentiated from the other democratic regime types such as the Presidential and the Parliamentary Systems. The key difference lies in the type of cultural values that underpin such models. According to Agpalo, the Presidential regime type emphasises the value of equality as exemplified by the premium it gives to the notion of checks and balances among the different departments under its system. In contrast, the parliamentary type underscores the value of liberty as evidenced by the restrictions it has placed on state power through the enactment of a bill of rights. On the other hand, the Pangulo regime type highlights the value of fraternity or "pagdamay".

Amidst these contextual factors, this paper argues that Covid-19 has unmasked the underlying centripetal mechanisms that restrict the federalism initiative in the Philippines. It also underscores the critical role of political agency to the success or failure of any movement

towards greater structural change in the Philippines. One of Duterte's main sources of political capital is the subscription of a vast number of the populace to the motto of his administration known as "tapang at malasakit". This roughly translates to courageous and caring. His administration has trumpeted its strongman approach in addressing the problems of the country while coupling it with both real and simulated policy initiatives that aim to cultivate the image as the caring father of the nation. Given the theoretical fit of the empirical evidence as displayed by the governance style of Duterte vis-à-vis other government institutions in the country with Agpalo's Pangulo regime model, it would appear that such political tendencies would circumscribe any power-sharing effort between the central and local government units under a federalist project.

Consequently, the political image cultivated by Duterte as well as his pronounced support for the cause of federalism in the Philippines when viewed against the backdrop of the on-going pandemic has provided a severe litmus test for his government's faithfulness to such lofty policy goals. Accordingly, I posit that the Covid-19 crisis has unmasked the strong centralization tendencies of Duterte that do not bode well for the federalism project. It can be considered ironic given the fact that federalism was one of his core electoral promises and where he has spent a significant amount of political capital to nudge the country towards greater decentralisation during the early part of his administration.

Missed Opportunity for Local Governance

The Covid-19 crisis has also surfaced the leadership potential of local officials who ideally, in a proposed federalist set-up, should be given the autonomy and support that will be beneficial to their local constituency. There are indications that such an arrangement has not been fully welcomed by the Duterte administration as exemplified by the way it has publicly responded to the local initiatives done by the different local government units.

This development is not surprising considering earlier events that in hindsight may have had profound effect on the federalism initiative in the country. Mendoza et. al (2018) argue that all these issues have been made even more crucial by a July 3, 2018 decision by the Supreme Court (SC) on a case between Mandanas et al. vs. Ochoa et al. (G.R. No. 199802) concerning the "just share" of local governments in national taxes. The decision on this case could significantly expand the revenue base from which the Internal Revenue Allotments (IRA) to LGUs are computed.

Romero (2020) underscores the implications of this decision for any federalism initiative. He argues that Mandanas had hoped the new IRA will be reflected in the 2019 budget. Now, the Duterte administration seems to ignore the local autonomy harness he championed himself through his daring federalist championship. He and his Cabinet are now stonewalling LGUs, negotiating with LGUs to delay the sharing of the new IRA until the next session.

This landmark decision as well as the subsequent national government response can be

considered quite a significant event under the Duterte administration as it further reveals the underlying policy environment that militates against the move towards federalism in the Philippines. The theoretical literature on federalism points to fiscal transfers from the central government to the other parts of a country as being a critical component for any federalism project to work. This is particularly true for areas that are characterised by highly uneven levels of development owing to historical circumstances.

The Philippines is one such country. Despite steady economic growth for over a decade, economic development is highly concentrated in just a few regions in the country such as those found in Region III (Central Luzon), Region IV-A (Calabarzon) and NCR (Metro Manila) while thirteen (13) other regions lag behind in terms of accepted development metrics. As a result, many areas outside of these more affluent regions have become and remain dependent on fiscal transfers known as internal revenue allotments (IRA). Such an allocation is based on formula that accounts for the land area and population size of each LGU. In addition, the type of LGU classification such as whether they are recognised as barangays (villages), municipalities, cities or provinces also impacts on the amount that would be forthcoming to their respective coffers.

Undoubtedly for some of these LGUs, the IRA is a vital economic resource needed to foster development in their areas. It should be noted the local taxes generated from whatever local enterprises that are based there are often not enough to cover many of the devolved functions provided under the Local Government Code of 1991. The lack of locally generated funding has caused many LGUs to become IRA-dependent. For many of them, the IRA can be considered as often being just barely enough to cover maintenance and operating expenses. Capital outlay for the building of much needed social infrastructure remains sparse as exemplified by many unfinished road projects and public facilities.

The formula has been applied only to taxes collected by the Bureau of Internal Revenue (BIR). The new high court ruling mandates that even those collected from custom duties as collected by the Bureau of Customs shall now be included as a source of funds to be disbursed to LGUs. As such for almost three decades now, the diminished size of the fiscal pie has prevented the LGUs from carrying out many of their developmental functions. This has contributed to the uneven development of the country's different regions as the lack of development in many areas has engendered large scale rural to urban migration by many Filipinos.

Perhaps a more deleterious effect of the current fiscal circumstance has been the absence or in many cases, the palpable lack of key devolved social services such as educational facilities, adequate health care, and job creation opportunities in these poorer regions that has led to the concentration of businesses in the metropolitan areas of the Philippines. Much of this enduring condition would have an impact on the Philippine's overall ability to address Covid-19 and to a large extent, shape the federalism project that was highly touted by the Duterte administration during the first half of his term.

Local Tensions

The Covid-19 crisis has exposed the acute deficiencies faced by both central and local governments in the Philippines. As the central government engaged in what many considered as tactical responses, some of which have been labeled as being incongruent with one another in dealing with the on-going pandemic, local government responses have had varying degrees of success. These are often determined by two critical factors namely, local executive leadership and municipal resources.

The case of the one of the more celebrated young mayors in the country is a good example of this phenomenon. Ma. Victor Reghis Sotto who is more popularly known locally as Vico is the local chief executive of Pasig City, which is one of the most affluent local government units in the country. Elected in 2019, he is renowned for his innovative approaches that are designed to protect his constituents who live in one of the most densely packed cities in the world. He, however, caught the ire of central government officials as he was implementing measures to ensure public health while at the same time prevent the economic dislocation of the mostly poor constituents in the city (Vico Sotto: Pasig to follow nat'l gov't on tricycles ban, 2020).

Particularly telling in this unfortunate episode was the fact that the Department of Interior and Local Government (DILG), which had been at the forefront of the federalism initiative in the country was the one which also sought to penalise Mayor Sotto for his policy stance (Aguilar, 2020). Only a public outcry aided by social media, prevented state forces from pursuing charges against him for allegedly going against the national policy being imposed by the Interagency Task Force on Emerging and Infectious Diseases.

The case of Vico Sotto is not an isolated case. The central government response to the Covid-19 has also led to policy overrides in other local jurisdictions. This is particularly true in Cebu which is considered as another major economic hub in the country. A recent pronouncement from the provincial government that sought to permit the use of tandem riding in motorcycles as public transport, since many modes of public conveyance have remained suspended resulting not only in economic losses but also unfathomable hardships for frontline workers who are needed by their respective industries, was disapproved resoundingly. No less than, President Rodrigo Duterte in a public address, overrode the decision of the Cebu provincial government on what could be construed as a purely local government matter (Aguilar, 2020).

While Pasig and Cebu might have the local economic wherewithal to cope with the limitations imposed by Covid-19 owing their status as highly urbanised cities with large tax bases, there are numerous other local government units that are not in a position to have an effective local pandemic response. Combine this with ill-timed and not well-thought out policy measures from the central government vis-à-vis local government units, this can lead to disastrous results.

One such policy measure known as the Balik-Probinsya (Return to Provinces) Program has been advocated by close Duterte ally, Sen. Christopher “Bong” Go. Ordinarily, this move

should have been complementary to the federalism initiative of the central government. As part of the policy to decongest major population centers that can quickly become epicenters of infections, people were incentivized to return to their province of origin. The program has been marked by an apparent lack of close coordination with receiving local government units (Lalu, 2020). This policy disarray created the phenomenon of locally stranded individuals (LSIs) who have been staying in major transportation hubs such as airports and seaports hoping that they could be accommodated in the next transport out of Manila (Hatid Probinsya and Balik Probinsya, more harm than good?, 2020).

Furthermore, this program arguably has negated the geographical advantages that the Philippines naturally have being an archipelagic state that could have further stemmed the rising tide of Covid-19. Moreover, to the detriment of the federalist narrative peddled by the Duterte government, there are indications that such an ill-timed program may have produced adverse effects in central-local relations and has again exposed the strong centralist tendencies of the Duterte administration.

A case in point is what happened in the local government of Ormoc in Leyte Province. For close to three months since the start of the community quarantine in the Philippines, this southern city has maintained zero Covid-19 cases owing to local government policies that ensured physical distancing. However, the first case of Covid-19 was documented in the city on May 21. The patient was a Balik-Probinsya beneficiary who came from Cebu. Since that time and up until June, the number of cases in Ormoc has increased to 35 (From its first COVID case last week, Ormoc now has 35 in a span of five days, 2020).

Ormoc City Mayor Richard Gomez, in a viral social media post, criticised the lack of coordination by the central government as a result of the Balik-Probinsya program that led to the drastic increase of Covid-19 cases in his city. He underscored that his city, unlike other more endowed local government units, would be easily overwhelmed by the influx of potential carriers of the virus. Relatedly, like the cases of the other local chief executives who had questioned the policy measures of the central government, Mayor Gomez was also admonished by central authorities (Hallare, 2020).

It is important to highlight these cases as they serve as a critical evidence of the overt and underlying centripetal forces at work that can lead to a rollback of the federalism initiative in the country. While the rhetoric for autonomy and federalism rings loud, the conspicuous policy responses from the top as seen in their decisions to over-ride the local decision makers provides a clearer picture on where the federalism initiative stands at this juncture.

Suggested Citation: Rosuelo, R. J. P. 2020. 'Covid-19 and its Effects on the Federalism Initiative in the Philippines'. *50 Shades of Federalism*.

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50 SHADES OF FEDERALISM

50 Shades of Federalism is a project established in October 2017 at Canterbury Christ Church University to help inform debate about many issues related to the topic of 'federalism'.

Articles, written by some of the leading scholars and practitioners in the field, will be published on a regular basis.

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